

IP 05-0167-CR 1 T/F USA v Montgomery
Magistrate Kennard P. Foster

Signed on 05/12/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
MONTGOMERY, ERIC,)	CAUSE NO. IP05-0167-CR-01-T/F
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 05-167-CR-01 (T/F)
)	
ERIC MONTGOMERY,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on December 20, 2005, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on December 19, 2005, and to submit to Judge Tinder proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on May 9, 2006 pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*. The government appeared by Josh Minkler, Assistant United States Attorney, for Gayle Helart, Assistant United States Attorney. The defendant appeared in person with his appointed counsel, James McKinley, Office of Indiana Federal Community Defender. Diane Bell, U. S. Parole and Probation officer, appeared and participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That James McKinley, Office of Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Montgomery in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Montgomery and his counsel who informed the Court that they had read and understood the specifications of each alleged violation and waived further reading thereof.

3. Mr. Montgomery was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Montgomery would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Montgomery had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Montgomery had violated the alleged condition or conditions of supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation on December 20, 2005.

7. Mr. Montgomery stated his readiness to waive the preliminary hearing at each hearing regarding the Petition then under consideration. Mr. Montgomery then waived, in writing, the preliminary hearing and he was held to answer.

8. The parties stipulated the following in open Court:

(1) Mr. Montgomery and the government agreed they were ready to proceed to disposition on the pending Petition to REVOKE Mr. Montgomery's supervised release in open Court this date.

(2) Mr. Montgomery admitted that he committed the violations of specifications set forth in the Petition to Revoke Supervised Release, filed with the Court on December 19, 2005 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>The defendant shall not commit another federal, state or local crime.</p> <p>On December 12, 2005, Eric Patterson, also known as Eric Montgomery, was arrested by officers with the Portsmouth, Ohio, Police Department and charged with Possession of Cocaine and Criminal Trespassing. According to the arresting officer, the offender was observed at the Farley Square Housing complex. Officers knew the offender was barred from the complex. The offender was taken into custody and a search of his person revealed several small particles of a white substance that field tested positive for cocaine. The cocaine had a total weight less than 1 gram.</p> <p>According to the arresting officer, the offender wanted to help himself and provided information about where the drugs were being kept. They agreed that if officers were able to make an arrest, then his charges would be dismissed. Officers responded to the information provided by the offender and recovered approximately 94 grams of crack cocaine. The charges on the offender were in turn dismissed as promised.</p>
2	<p>The defendant shall not leave the judicial district without permission of the Court or probation officer.</p> <p>On December 12, 2005, the offender was arrested in Portsmouth, Ohio. The offender did not have permission to travel outside the Southern District of Indiana.</p>
3	<p>The defendant shall reside in a community corrections center (CCC) for a period up to six months as approved by the probation officer.</p>

The undersigned instructed the offender to report to the Volunteers of America on December 14, 2005, to begin six months of CCC placement. He reported to the facility as instructed; however, when he arrived he was arrested by officers with the Indianapolis Police Department on a probation violation. The probation violation alleges the offender left the state of Indiana without permission.

- 4 **The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.**

On December 12, 2005, the offender was arrested by officers with the Portsmouth, Ohio, Police Department, and on December 14, 2005, he was arrested by officers with the Indianapolis, Indiana, Police Department. The offender has failed to notify the undersigned of these arrests.

(3) The government will agree to not file an additional violation against the defendant regarding his arrest on April 20, 2006 in Ohio.

(4) Mr. Montgomery has a relevant criminal history category of I. *See*, U.S.S.G. §7B1.4(a).

(5) The most serious grade of violation committed by Mr. Montgomery constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

(6) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Mr. Montgomery is 4-10 months.

(7) The parties agree that the appropriate disposition for Mr. Montgomery's violation of the conditions of supervised release is 9 months to the custody of the Attorney General or his designee. It is recommended that, after service of the sentence, Mr. Montgomery be subject to supervised release under the previous conditions originally ordered for a period of three years. The defendant will begin his supervised release with six

months at the Volunteers of America, Indianapolis, Indiana, subject to the rules and regulations of that facility.

8. The Court then placed Mr. Montgomery under oath and inquired directly of him whether he admitted committing violations of supervised release contained in the Petition to Revoke Supervised Release. Mr. Montgomery admitted the violations.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Eric Montgomery, violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **REVOKED**, and Eric Montgomery is sentenced to 9 months in the custody of the Attorney General or his designee, with three years of supervised release to follow. After his incarceration, the defendant is ordered to begin his first six months of supervised release at the Volunteers of America.

The Magistrate Judge recommends that Ms. Bell, U. S. Parole and Probation officer, prepare for submission to the Honorable John Daniel Tinder, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Montgomery stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Montgomery's supervised release.

IT IS SO RECOMMENDED this 12th day of May, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court

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U. S. Marshal Service